IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 499 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANLAL RUDABHAI ZAVIA

Versus

CHAMPABEN MAGANBHAI ZAVIA

Appearance:

MS SEJAL K MANDAVIA for Petitioner

MR NIRAV C THAKKAR for Respondent No. 1

MR KG SHETH, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/01/2000

ORAL JUDGEMENT

Present petitioner-original opponent of Cri. Misc. Application No.184 of 1997 and the petitioner of Cri. Revision Application No.119 of 1998 has filed the present Criminal Revision Application against the

judgment and order dated 13-8-1999 passed by the Additional Sessions Judge, Junagadh in Cri. Revision Aplication No.119 of 1998 whereby he has set aside the judgment and order passed in Cri. Misc. Appln. No.184 of 1997 filed by the present respondent No.1-wife against the present petitioner-husband under sec.125 of Cr.P.C., which was dismissed by the learned Judicial Magistrate (First Class), Keshod on 16-11-1998, and awarded maintenance of Rs.500/- per month from the date of filing of Cri.Misc. Application No.184 of 1997, i.e. from 22-9-1997. The Court had also directed the present petitioner to deposit the arrears in the Court of learned Judicial Maistrate (First Class), Keshod within a period of three months from the date of pronouncement of the order, i.e. 13-8-1999.

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#. At the time of issuing notice in the present proceedings, this Court has directed the present petitioner-husband to deposit an amount of Rs.3,000/towards cost of the present respondent No.1-wife and same has been deposited by the present petitioner in the court below. Said amount has been withdrawn by the respondent No.1-wife as per the statement made by the learned advocate for the petitioner.

#. I have heard learned advocate appearing for the petitioner, Ms.S.K.Mandaviya, learned advocate appearing for the respondent No.1, Mr.N.C.Thakkar and learned APP for the respondent No.2-State Mr.K.G.Sheth at length.

#. Ms.Mandaviya has mainly argued that it has been categorically admitted by the respondent No.1-wife in Cri.Misc.Application as well as in her oral evidence before the learned Judicial Magistrate (First Class), Keshod that at the time of her marriage, first wife of the present petitioner was alive. Relying upon the above admission in the cross-examination of the respondent No.1-wife, Ms.Mandaviya has argued that as per the settled law, during the life time of first wife, if somebody enters into the life of the husband and they lived in one shelter as wife and husband, then also, she is not entitled to maintainance under sec.125 of Cr.P.C. Drawing my attention towards the judment reported in AIR 1988 S.C. page 644, she has argued that it has been wrongly distinguished by the revisional court and, therefore, the judgment and order passed by the revisional court requires to be set aside.

#. Whereas Mr.N.C.Thakkar has drawn my attention towards three dates. First is 15-7-1993, that is the

date of marraige of present respondent No.1 with the present petitioner. Second is 4-9-1994, that is the date on which first wife of the present petitioner had expired. Third is 22-9-1997, that is the date on which, according to respondent No.1-wife, she has been driven out by the present petitioner from the matrimonial house. Relying upon the above three dates, he has drawn my attention towards a judgment reported in AIR 1999 Supreme Court 3348 and more partaicularly towards head note of paras 6 and 17 which reads as under:

"Criminal P.C. (2 of 1974) S. 125-Maintenance proceedings-Performance of marriage-Proof-strict proof is not required-It is sufficient if claimant prima facie satisfies the Court that claimant and her husband lived as husband and wife-Performance of essential ceremonies need not also be proved'.

Learned advocate for the petitioner has also read out oral evidence along with the cross-examination of the respondent No.1-wife along with the Cri. Misc. Application No.184 of 1997 and drawn my attention towards the judgment and order passed by the trial court . What is estblished from the above evidence is that at the time of marriage of the present respondent No.1 with the present petitioner, first wife of the petitioner-husband was alive. But no evidence worth the name is there on record to indicate that at the relevant time, present petitioner-husband has not obtained the divorce. Not a single question has been asked by the present petitioner to the respondent No.1-wife in the cross-examination though it was his case from the very beginning. Merely because of the fact that first wife of the petitioner was alive, it does not mean that Court should not come to the definite conclusion that divorce has not taken place. It was duty of the concerned person who has taken the defence to prove the same beyond reasonable doubt before the court below.

#. Having regard to the facts and circumstances of the above case and in view of the reported judgment of Supreme Court reported in AIR 1999 Supreme Court 3348, when the respondent No.1-wife could prove that she and the present petitioner have lived together as wife and husband, this Cri. Revision Application is required to be rejected.

#. This Criminal Revision Application is hereby rejected. Notice is discharged.

(R.P.DHOLAKIA,J.)

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